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3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 UNITED STATES OF AMERICA,

Case No. 2:18-CR-112 JCM (VCF)

8 Plaintiff(s),

ORDER

9 v.

10 WILLIAM WALLER, et al.,

11 Defendant(s).
12

13 Presently before the court is the United States of America's ("the government") motion *in*
14 *limine*. (ECF No. 88). Defendant William Waller ("defendant") has not filed a response.

15 **I. Facts**

16 Jury trial in this case is set for Monday, March 11, 2019. (ECF No. 64). Defendant has
17 been indicted on five counts pursuant to the United States Tax Code: "evasion of payment" in
18 violation of 26 U.S.C. § 7201; "attempting to interfere with administration of internal revenue
19 laws" in violation of 26 U.S.C. § 7212(a); two counts of "willful failure to file return" in violation
20 of 26 U.S.C. § 7203; and "false statements on a loan application" in violation of 18 U.S.C. § 1014.
21 (ECF No. 1).

22 The court now considers the government's latest motion *in limine*. (ECF No. 88).

23 **II. Legal Standard**

24 "The court must decide any preliminary question about whether . . . evidence is
25 admissible." Fed. R. Evid. 104. Motions *in limine* are procedural mechanisms by which the court
26 can make evidentiary rulings in advance of trial, often to preclude the use of unfairly prejudicial
27 evidence. *United States v. Heller*, 551 F.3d 1108, 1111–12 (9th Cir. 2009); *Brodit v. Cambra*, 350
28 F.3d 985, 1004–05 (9th Cir. 2003).

1 “Although the Federal Rules of Evidence do not explicitly authorize *in limine* rulings, the
2 practice has developed pursuant to the district court’s inherent authority to manage the course of
3 trials.” *Luce v. United States*, 469 U.S. 38, 41 n.4 (1980). Motions *in limine* may be used to
4 exclude or admit evidence in advance of trial. *See* Fed. R. Evid. 103; *United States v. Williams*,
5 939 F.2d 721, 723 (9th Cir. 1991) (affirming district court’s ruling *in limine* that prosecution could
6 admit impeachment evidence under Federal Rule of Evidence 609).

7 Judges have broad discretion when ruling on motions *in limine*. *See Jenkins v. Chrysler*
8 *Motors Corp.*, 316 F.3d 663, 664 (7th Cir. 2002); *see also Trevino v. Gates*, 99 F.3d 911, 922 (9th
9 Cir. 1999) (“The district court has considerable latitude in performing a Rule 403 balancing test
10 and we will uphold its decision absent clear abuse of discretion.”). “[I]n limine rulings are not
11 binding on the trial judge [who] may always change his mind during the course of a trial.” *Ohler*
12 *v. United States*, 529 U.S. 753, 758 n.3 (2000); *accord Luce*, 469 U.S. at 41 (noting that *in limine*
13 rulings are always subject to change, especially if the evidence unfolds in an unanticipated
14 manner).

15 “Denial of a motion *in limine* does not necessarily mean that all evidence contemplated by
16 the motion will be admitted at trial. Denial merely means that without the context of trial, the
17 court is unable to determine whether the evidence in question should be excluded.” *Conboy v.*
18 *Wynn Las Vegas, LLC*, No. 2:11-cv-1649-JCM-CWH, 2013 WL 1701069, at *1 (D. Nev. Apr. 18,
19 2013).

20 **III. Discussion**

21 In its motion, the government moves for the court to prohibit defendant from introducing
22 evidence related to or constituting the following: newspaper clippings and advertisements, Internal
23 Revenue Service (“IRS”) publications, IRS regulations, a written statement by Mr. John Turner,
24 and IRS data relating to defendant’s income tax filing history for the years 1998 through 2008.
25 (ECF No. 88 at 2). The government also moves for the court to preclude defendant from calling
26 as witnesses Joe Banister, John Turner, and Victoria Osborne, for the purpose of testifying as to
27 their individual interpretations of the tax laws of the United States. *Id.* at 4.

1 The government argues that such exhibits and witness testimony present a “significant
2 danger” of confusing and misleading the jury as to the nature and applicability of the tax laws of
3 the United States in contravention of Federal Rule of Evidence (“FRE”) 403. *Id.* at 2. The
4 government asserts that admission of such documents or testimony that purport to state the law
5 could “easily obfuscate the relevant issue and tempt the jury to speculate that the mere existence
6 of documentary or testimonial support for the defendant’s position negates his independent
7 knowledge that he has a legal duty.” *Id.* at 4. The government also argues that such testimony
8 violates the rule against hearsay and does not fall within any recognized exception to the rule
9 against hearsay pursuant to FRE 803. *Id.* at 3.

10 In further support of its motion, the government cites persuasive authority from the Seventh
11 Circuit, *United States v. Latham*, 754 F.2d 747 (7th Cir. 1985). In *Latham*, the Seventh Circuit
12 held that the trial judge properly admitted into evidence portions of certain writings that the
13 defendant had quoted during his testimony, “since those portions specifically addressed claiming
14 exempt status on W-4 forms and the taxpayer’s duty to file tax returns—the relevant issues at
15 trial.” *Latham*, 754 F.2d at 751. However, the Seventh Circuit also held that the trial judge
16 properly excluded the full text of the writings, as the full texts contained only general criticisms of
17 the tax code and did not relate to the relevant issues in the case. *Id.* The Seventh Circuit held that
18 the trial judge properly excluded exhibits of only slight probative value, as they may have confused
19 or misled the jury. *Id.* (citing Fed. R. Evid. 403).

20 The Ninth Circuit clarified the types of evidence to be permitted in § 7203 cases (such as
21 the instant case) in *United States v. Powell*, 955 F.2d 1206 (9th Cir. 1991). In *Powell*, the Ninth
22 Circuit noted in dicta that a court “ordinarily cannot exclude evidence relevant to the jury’s
23 determination of what a defendant thought the law was in § 7203 cases because willfulness is an
24 element of the offense. *Id.* at 1214.

25 However, in § 7203 prosecutions, only “statutes or case law upon which the defendant
26 claims to have *actually relied* are admissible to disprove that element if the defendant lays a proper
27 foundation which demonstrates such reliance.” *Id.* “Legal materials upon which the defendant
28 does not claim to have relied, however, can be excluded as irrelevant and unnecessarily confusing

1 because only the defendant's subjective belief is at issue: the court remains the jury's sole source
2 of the law." *Id.* Nevertheless, the court may instruct the jury that any legal materials admitted at
3 trial are relevant only to the defendant's state of mind and may give limiting instructions to the
4 jury to that effect. *Id.*

5 In light of this persuasive authority, the court will grant the government's motion and
6 preclude defendant from examining any witnesses or presenting any writings, articles, or other
7 documentary exhibits that question the legitimacy of the tax laws of the United States. However,
8 to the extent that defendant can demonstrate actual reliance upon *legal materials* (cases, statutes,
9 published IRS regulations and memos, etc.) in reaching his conclusion that the tax laws at issue
10 did not require him to file his tax returns or otherwise pay his tax assessments, the court will allow
11 defendant to present only the portions of such materials upon which defendant relied in making
12 that determination. *See Powell*, 955 F.2d at 1214.

13 Moreover, the court also hereby precludes defendant from examining Banister, Turner, and
14 Osborne (or cross-examining government witnesses) as to their lay opinions regarding defendant's
15 purported "good-faith beliefs." As the government notes, such testimony calls for speculation
16 regarding defendant's state of mind, and FRE 701 precludes testimony of this nature by lay people.
17 *See Fed. R. Evid. 701.*

18 **IV. Conclusion**

19 Accordingly,

20 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that the government's motion
21 *in limine* (ECF No. 88) be, and the same hereby is, GRANTED, consistent with the foregoing.

22 DATED March 12, 2019.

23 
24 UNITED STATES DISTRICT JUDGE